

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C-B/S
ATX, ATX II and WILDERNESS TIRES) MDL NO. 1373
PRODUCTS LIABILITY LITIGATION)
_____)
THIS DOCUMENT RELATES TO ALL)
ACTIONS)

**ORDER REGARDING BRIDGESTONE CORPORATION'S
MOTION FOR PROTECTIVE ORDER**

This cause is before the magistrate judge on defendant Bridgestone Corporation's Motion for Protective Order. The motion is fully briefed, and the magistrate judge, being duly advised, **GRANTS IN PART AND DENIES IN PART** the motion to the extent and for the reasons set forth below.

Defendant Bridgestone Corporation ("Bridgestone") is the Japanese parent company of Bridgestone/Firestone, Inc. ("Firestone"), the U.S. company that manufactured and sold the allegedly defective tires at issue in this litigation. Bridgestone has filed a motion to dismiss the master complaint which governs the class action claims in this litigation because it asserts that this court lacks personal jurisdiction over it. In the instant motion, Bridgestone argues that the plaintiffs should not be permitted to conduct jurisdictional discovery because they have failed to make a prima facie showing that Bridgestone is subject to the jurisdiction of this court. "Foreign nationals usually should not be subjected to extensive discovery in order to determine whether personal jurisdiction over them exists." Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 946 (7th Cir. 2000), cert. denied, ____ U.S. ____, 2001 WL 167623 (Mar. 26, 2001). Rather, before jurisdictional discovery should be permitted, the plaintiffs must "[a]t a minimum . . . establish a colorable or prima facie showing of personal jurisdiction." Id. The issue, therefore, is

whether the class plaintiffs have made a colorable claim of this court's personal jurisdiction over Bridgestone in this case.

The fact that Bridgestone is the parent company of the U.S. company that manufactured the allegedly defective tires at issue in this case clearly is not sufficient to establish jurisdiction over Bridgestone, and, therefore, does not justify jurisdictional discovery. See, e.g., id. at 943 ("We join other courts in finding that stock ownership in or affiliation with a corporation, without more, is not a sufficient minimum contact."). However, if a parent company dominates or exercises an "unusually high degree of control" over the subsidiary, so that the subsidiary is essentially an agent of the parent conducting the parent's business within the jurisdiction, then the court may exercise personal jurisdiction over the parent based upon the actions of the subsidiary within the forum. See id.; see also, IDS Life Ins. Co. v. SunAmerica Life Ins. Co., 136 F.3d 537, 541 (7th Cir. 1998) ("If the subsidiaries were acting as SunAmerica's Illinois agent in the sense of conducting SunAmerica's business rather than their own business, the parent could be sued."); United Elec., Radio & Mach. Workers of America v. 163 Pleasant Street Corp., 960 F.2d 1080, 1091 (1st Cir. 1992) (citations omitted) ("[T]he presumption of corporate separateness [may] be overcome by clear evidence that the parent in fact controls the activities of the subsidiary.").

The plaintiffs argue that such is the situation here -- that Bridgestone dominates and controls the business activities of Firestone and that Firestone exists simply to conduct Bridgestone's tire business in the United States. To support their argument, the plaintiffs make the following allegations in paragraphs 57-61 of the master complaint:

57. [Bridgestone] is a corporation organized under the laws of Japan, with its principal place of business in Tokyo, Japan. In 1988, Bridgestone acquired defendant Firestone for \$2.6 billion, thereafter forming Bridgestone/Firestone, Inc., in the United States. In 1989, Bridgestone integrated Firestone's North American operations with its own. Bridgestone wholly owns Firestone and conducts business throughout the United States through that company.
58. On its internet website, Bridgestone consistently states that it operates 46 tire plants throughout the world, including the Firestone plants in Decatur, Illinois and Wilson, North Carolina. Bridgestone sets the quality control and production standards at all Firestone plants. Bridgestone describes itself, and its divisions, as a single business, with Bridgestone developing and promoting production throughout the world. On its website, Bridgestone refers to Firestone as one of its [Bridgestone's] brands, stating "[a] multi-branding strategy is the cornerstone of Bridgestone marketing." In a 1998 corporate data statement, Bridgestone states that it had an 18.8 percent share of the world's tire market. It does not differentiate any segment of its business, instead aggregating all segments, including Firestone, as part of Bridgestone's own.
59. From 1993 through October 2000, Masatoshi Ono served jointly as the Chairman and Chief Executive Officer of Firestone, and as an Executive Vice President and member of the Board of Directors of Bridgestone.
60. The current President and Chief Executive Officer of Bridgestone is Yoichiro Kaizaki, who was Mr. Ono's predecessor as CEO of Firestone. Mr. Kaizaki recently denied quality control problems in its United States plants, thus intending to assert personal knowledge about those plants and how they operated. Kaizaki also publicly accepted, on behalf of Bridgestone, responsibility for the defective tires in question, saying that Bridgestone should have exercised even greater quality control in the United States. Furthermore, when asked if he would resign in the face of this crisis, Kaizaki said that he and Bridgestone would take responsibility for the Tires, and that "[h]andling the immediate task of the recall and rebuilding the company is the best way to [do so]." Kaizaki also said that Bridgestone would institute "global standards" at all plants in its worldwide operations. See President Stands Behind Tires, (visited Dec. 29, 2000), <http://www.usatoday.com/money/consumer/autos/mauto828.htm>.
61. At all relevant times herein, Bridgestone maintained control over Firestone and maintained a regular flow of information from Firestone to Bridgestone. For example, Bridgestone sent three of its six senior vice presidents to Nashville, Tennessee to deal with the recall, described below, one of whom is now the Chief Operating Officer of Firestone.

In essence, the plaintiffs allege throughout the master complaint that Bridgestone, through its control of and participation in Firestone's operations, was directly involved in the actions upon which this action is based. In addition, in response to the instant motion, the plaintiffs assert the following:

1. There is a systematic overlap between officers and directors of Bridgestone and those of Firestone;
2. As a matter of course, Firestone kept Bridgestone informed about its meetings with Ford to discuss the subject matter of this lawsuit;
3. Bridgestone engineers and Firestone engineers exchange information and collaborate in the development and testing of tires;¹
4. Bridgestone was aware of the alleged tire defect as early as 1995 and directly participated in providing replacement tires to Ford in countries other than the United States;
5. Bridgestone was involved in the investigation into the cause of the tread separation problem at issue in this case; and
6. Bridgestone directed Firestone's response to the tire recall at issue in this case.

Bridgestone, on the other hand, asserts that its relationship with Firestone is that of a typical parent to a subsidiary, and that all of the actions which underlie this litigation were those of Firestone, not Bridgestone. In support of its argument, Bridgestone has submitted the affidavit of Hiroyuki Kita, manager of Bridgestone's Corporate Legal Department. Mr. Kita states the following in paragraphs 10-13 of his affidavit:

¹For example, the plaintiffs quote Firestone's website, which states that "[Firestone] Research is a state-of-the-art facility staffed with a multi disciplinary team of highly-trained and experienced scientists from different countries operating under an organizational structure which promotes an ongoing and boundary-free interaction among staff members. We actively collaborate with the staffs of our company's other two technical centers in Tokyo and Rome." Plaintiffs' Brief at 7 (quoting <http://www.bfresearch.com/leadpage0800.html>).

10. At all relevant times, Bridgestone Corporation and Firestone have been separate, adequately capitalized corporations.
11. Bridgestone Corporation does not establish daily management policies for Firestone, nor does Bridgestone Corporation control the daily operations of Firestone. As a result, the daily operations of Bridgestone Corporation and Firestone are separate.
12. There are formal barriers between management at Bridgestone Corporation and management at Firestone, and the formalities in existence are observed. As a result:
 - Ⓒ Bridgestone Corporation and Firestone each conducts its own separate shareholder and board of directors meetings.
 - Ⓒ Persons with day-to-day managerial responsibilities at Bridgestone Corporation have no day-to-day managerial responsibilities at Firestone; and persons with day-to-day managerial responsibilities at Firestone have no such responsibilities at Bridgestone Corporation.
 - Ⓒ Bridgestone Corporation and Firestone do not share common departments or businesses.
 - Ⓒ Bridgestone Corporation and Firestone keep separate books and accounts and file separate tax returns.
 - Ⓒ Firestone's operating capital is not provided by Bridgestone Corporation. Rather, its operating capital is borrowed from outside sources and/or comes from its own business profits.
13. From February 1993 through October 2000, Masatoshi Ono served as Chief Executive Officer of Firestone. During this time, Mr. Ono had no day-to-day managerial responsibilities at Bridgestone Corporation.

Bridgestone argues that these assertions by Mr. Kita conclusively demonstrate that Bridgestone does not exercise any unusual amount of control over Firestone, and because the plaintiffs have failed to submit any affidavit or other competent evidence to contradict those assertions, they are not entitled to conduct jurisdictional discovery.

In addition to asserting that personal jurisdiction over Bridgestone is appropriate because of Bridgestone's alleged control of Firestone, the plaintiffs also allege that Bridgestone's own contacts with the United States, independent of Firestone, are extensive enough to subject it to the general

jurisdiction of this court. In support of that argument, the plaintiffs assert:

1. Bridgestone has advertised and sold its tires in the United States since 1967;
2. Bridgestone tires are readily available for purchase in the United States today;² and
3. Bridgestone is a high-profile sponsor of professional automobile racing teams in the United States and provides tires for race cars.

To the contrary, Bridgestone, in paragraph 8 of Mr. Kita's affidavit, asserts:

8. Bridgestone Corporation is not licensed to do business in any state and does not maintain a registered agent or officer for service of process in any state. Bridgestone Corporation does not transact business in any state. It does not contract to supply goods or services in any state. Bridgestone Corporation also does not engage in any other persistent course of conduct in, or derive substantial revenue from goods used or consumed or services rendered in, any state. Moreover, to my best knowledge: (i) Bridgestone Corporation maintains no offices, post office boxes, places of business, or telephone listings in any state. (ii) Bridgestone Corporation has no real estate, bank accounts or other interest in property in any state, and has not had real estate, bank accounts or other interest in property in any state. (iii) It has not incurred any obligation to pay, and has not paid, any taxes in any state. (iv) It does not have employees in any state and has not recruited any employees from any state. (v) Bridgestone Corporation has not conducted any advertising, solicitation, service, marketing or other sales promotions in any state. (vi) Bridgestone Corporation has not designed, manufactured, sold, advertised, delivered, or issued warranties on any good or product in any state, nor has it participated in the decision to sell or deliver any good or product to any state. (vii) At no time relevant to this lawsuit has Bridgestone Corporation entered into a contract in any state or committed any tort, in whole or in part, in any state.

After carefully considering the arguments of each side, the authorities cited by each side, and after weighing Bridgestone's interest in avoiding costly discovery if, in fact, it is not subject to this

²The plaintiffs also note that one of the tires on a Ford Explorer involved in a roll-over accident in California was manufactured by Bridgestone in Japan and purchased in the United States as a replacement tire. The magistrate judge fails to see the relevance of this fact, beyond providing further evidence that Bridgestone tires are available for sale in the United States.

court's jurisdiction against the plaintiffs' right to obtain the evidence necessary to prove jurisdiction if, in fact, Bridgestone is subject to this court's jurisdiction, the magistrate judge determines that the interests of justice will best be served by permitting the plaintiffs to conduct very limited, targeted discovery to explore the seeming inconsistencies between Mr. Kita's affidavit and the evidence submitted by the plaintiffs. Specifically, anyone perusing Bridgestone's website or reading its annual report would certainly get the impression that Bridgestone does substantial business in the United States and treats Firestone's business, research and development, profits, and tread separation problem as its own. The reality may, of course, be otherwise, but the magistrate judge believes that the plaintiffs are entitled to conduct limited discovery to determine whether this is the case. Similarly, while Mr. Kita asserts that Bridgestone has not conducted sales or advertising in the United States, the fact is that Bridgestone tires are available for purchase in the United States. The magistrate judge believes that the plaintiffs are entitled to determine how those tires get here and how much revenue, if any, Bridgestone derives from their sale. Therefore, Bridgestone's motion for protective order is **DENIED** to the extent that it seeks to prevent all jurisdictional discovery by the plaintiffs.

However, Bridgestone's motion for protective order is **GRANTED IN PART** to the extent that it argues that the plaintiffs' discovery requests, as written, are overly broad. The magistrate judge determines that, with the following exceptions, the plaintiffs are entitled to answers to their interrogatories served on Bridgestone on or about February 16, 2001,³ but only as to the years 1994 through 2000. The exceptions are:

³To the extent that Bridgestone complains that the plaintiffs' discovery requests directed to Firestone are overly broad, Bridgestone has no standing to raise that issue.

1. For Interrogatory No. 3, Bridgestone need not supply information regarding purchases made in the United States;
2. For Interrogatory No. 6, Bridgestone need answer only as to Bridgestone itself and any subsidiary or affiliate incorporated in the United States or having its principal place of business in the United States, and Bridgestone need not provide home addresses for any individual;
3. For Interrogatory No. 11, Bridgestone need answer only as to itself, not its agents and employees;
4. For Interrogatory No. 18, Bridgestone need only identify residents and/or entities it recruited or hired to work in the United States as full- or part-time employees, agents or representatives;
5. For Interrogatory No. 23, Bridgestone need only answer as to automobile racing in the United States.

The plaintiffs also are entitled to a response to its Interrogatories Nos. 1, 7, 11, and 12 served on Bridgestone on or about February 27, 2001, for the years 1994 through 2000. In addition, the plaintiffs are entitled to responses to the following of its document requests served on Bridgestone on or about February 16, 2001, again for the years 1994 through 2000 only: Requests Nos. 1 and 2, as to Bridgestone only; Requests Nos. 3, 6, 8, 9, 11; Request No. 14, to the extent that the minutes discuss Firestone or any business or sales in the United States; Requests Nos. 15, 16, 23, 25, 28; Request No. 30 as it relates to the specific recalled tires at issue in this case; Request No. 31 as it relates to the specific recalled tires at issue in this case and/or the U.S. plants at which they were manufactured;

Request No. 32; Request No. 33 as to U.S. subsidiaries only; Requests Nos. 35 and 36. At this time, the plaintiffs are not entitled to responses to any of its document requests served on Bridgestone on or about February 27, 2001.

The magistrate judge believes that responding to the limited discovery requests set forth above will not be overly burdensome on Bridgestone and will provide the plaintiffs with adequate information to support their jurisdictional arguments. Bridgestone shall provide its responses to the plaintiffs as soon as practicable, but in no event later than **30 days from the date of this Entry**. The plaintiffs shall submit any additional supplement to its response in opposition to Bridgestone's motion to dismiss **within 14 days of receiving Bridgestone's discovery responses**; Bridgestone may supplement its reply **within 7 days of the plaintiffs' supplemental opposition**.

ENTERED this _____ day of April 2001.

V. Sue Shields
United States Magistrate Judge
Southern District of Indiana

Copies to:

Irwin B Levin
Cohen & Malad
136 North Delaware Street
P O Box 627
Indianapolis, IN 46204

William E Winingham
Wilson Kehoe & Winingham
2859 North Meridian Street
P.O. Box 1317

Indianapolis, IN 46206-1317

Randall Riggs
Locke Reynolds LLP
201 N. Illinois St., Suite 1000
P.O. Box 44961
Indianapolis, IN 46244-0961

Daniel P Byron

McHale Cook & Welch PC
320 N Meridian St
1100 Chamber of Commerce Bldg
Indianapolis, IN 46204